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# Canada-British Columbia Immigration Agreement

## Annex F: Temporary Foreign Workers

2010

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### 1.0 Preamble

1.1 For the purposes of this Annex, "Canada" means Canada as represented by the Minister of Citizenship and Immigration ("CIC") and the Minister of Human Resources and Skills Development Canada ("HRSDC"), unless otherwise indicated. "British Columbia" means British Columbia as represented by the Minister of Advanced Education and Labour Market Development.

1.2 Whereas subsection 5(1) of the *Department of Citizenship and Immigration Act* (DCIA) authorizes the Minister of Citizenship and Immigration, with the approval of the Governor-in-Council, to enter into agreements with provinces for the purpose of facilitating the formulation, coordination and implementation - including the collection, use and disclosure of information - of policies and program for which the Minister is responsible; and whereas paragraph 204(c) of the *Immigration and Refugee Protection Regulations* (IRPR) authorizes the issuance of work permits under section 200 of the IRPR to foreign nationals who intend to perform work pursuant to an agreement entered into by the Minister of Citizenship and Immigration with a province; this Annex constitutes an agreement in accordance with subsection 5(1) of the DCIA, subsection 8(1) of the *Immigration and Refugee Protection Act* (IRPA) and paragraph 204(c) of the IRPR. This Annex shall be governed by the provisions of the Canada-British Columbia Immigration Agreement (the "Agreement") in any matters not specifically addressed in this Annex.

1.3 Whereas, pursuant to the *Department of Human Resources and Skills Development Act* (DHRSDC Act), the powers, duties and functions of the Minister of Human Resources and Skills Development extend to all matters relating to human resources and skills development in Canada over which Parliament has jurisdiction and which are not by law assigned to any other Minister, department, board or agency of the Government of Canada; and whereas the Minister of Human Resources and Skills Development is authorized, pursuant to section 10 of the DHRSDC Act to enter into agreements with provinces for the purposes of facilitating the formulation, coordination and implementation of programs and policies related to the powers, duties and functions conferred by that Act.

1.4 Whereas paragraph 3 (1) (a) of the IRPA states that it is an objective of that Act "to permit Canada to pursue the maximum social, cultural and economic benefits of immigration", Canada and British Columbia agree that a Temporary Foreign Worker (TFW) Annex to the Agreement will support British Columbia's efforts to address its unique economic and social needs, which will in turn contribute to Canada's overall social, cultural and economic benefit.

1.5 Canada and British Columbia agree that measures to facilitate and expedite the entry of TFWs will be taken recognizing the importance of supporting British Columbia's efforts to train and improve the skills of British Columbians, and of ensuring compliance with all applicable laws including those involving immigration, employment standards, workplace safety and labour regulations.

1.6 Canada and British Columbia recognize that providing opportunities for all foreign nationals legally in British Columbia to successfully participate in their respective workplaces and

communities is essential to achieve the economic and social benefits of immigration policies and programs.

Therefore, Canada and British Columbia agree to the following:

## 2.0 Definitions

"Dependent" refers to persons meeting the definition of "dependent child" as set out in section 2 of the IRPR.

"Job" refers to any piece of work ("work" being defined in section 2 of the IRPR).

"Occupation" refers to a job which is defined and described in detail in the National Occupation Classification ("NOC") system as defined in section 2 of the IRPR.

"High-Skilled TFW" refers to any Temporary Foreign Worker whose occupation is found in levels 0, A or B of the NOC system.

A "Low-Skilled TFW" is any Temporary Foreign Worker who does not fit the definition of "High-Skilled TFW".

"Temporary Foreign Worker" or "TFW" refers to any foreign national who has been authorized to work temporarily in Canada.

"Temporary Foreign Worker Program" or "TFWP" or "TFW Program" refers to the functions under the IRPA and the IRPR that allow the Government of Canada to authorize foreign nationals to work temporarily in Canada.

"Labour Market Opinion" (or "LMO") is an opinion provided by HRSDC under section 203 of the IRPR and upon which a determination by an officer of CIC as to whether a job offer is genuine and whether the employment of the foreign national is likely to have a neutral or positive effect on the labour market in Canada is based.

Canada-British Columbia Working Group on Temporary Foreign Workers ("TFW Working Group") refers to the working group established in 2006 by representatives of the departments and ministries of the signatories to this Annex, as well as representatives from related ministries.

## 3.0 Purpose and Objectives

### 3.1 Purpose

The purpose of this Annex is to identify areas of cooperation between Canada and British Columbia and to support the operation of the TFW Program in British Columbia in ways that:

- a. provide British Columbia with mechanisms to facilitate the entry of TFWs to British Columbia to meet its economic development priorities, in a manner that does not negatively affect the normal functioning of the local labour market;
- b. enhance information sharing between Canada and British Columbia for the purposes of research, evaluation, policy and operational matters;
- c. increase the awareness amongst employers, TFWs, and interested third parties of their respective rights and responsibilities; and
- d. facilitate research and evaluation of the TFW Program in order to enhance understanding of TFW outcomes.

### 3.2 Objective

3.2.1 The objective of this Annex is to allow Canada and British Columbia to better work together to meet the particular needs and circumstances of British Columbia's employers, labour market, and economy with respect to the role played by the entry of foreign workers to the province to work on a temporary basis. In better addressing the needs of British Columbia's employers, Canada and British Columbia recognize the unique situation of TFWs in the labour market, and are committed to protecting their rights.

3.2.2 Canada and British Columbia agree that meeting this objective will require the participation and co-operation of various federal and provincial departments, ministries and agencies in addition to those of the signing Ministers, including but not limited to the Canada Border Services Agency (CBSA) and on the part of British Columbia, the Ministry of Labour and the Ministry of Agriculture and Land.

3.2.3 The Annex seeks to promote the entry of TFWs destined to work in British Columbia through agreed-upon mechanisms as expeditiously as possible, taking into consideration applicable law, operational and resource constraints, and national security.

## **4.0 TFWs Recommended By British Columbia**

4.1 Canada and British Columbia agree that addressing the objective outlined in this Annex can be achieved in part through joint planning and priority-setting with respect to the entry of TFWs into British Columbia.

4.2 *Work Permit Issuance to Individual Foreign Nationals* - Canada and British Columbia agree that, pursuant to paragraph 204(c) of the IRPR, CIC may issue a work permit to an eligible individual foreign national destined to work in British Columbia in a specific occupation for a named employer or defined group of employers without requiring a Labour Market Opinion, whenever British Columbia has provided CIC with a written recommendation to issue a work permit to that foreign national authorizing him or her to work for a particular employer or defined group of employers.

4.2.1 CIC and British Columbia agree that the number of work permits issued to principal applicants, pursuant to section 4.2 of this Annex, will be based on a written estimate from British Columbia. British Columbia will provide this estimate to CIC for each upcoming year, two months in advance of the start of that year.

4.3 *Work Permit Issuance to Groups of Foreign Nationals* - Canada and British Columbia also agree that, pursuant to paragraph 204(c) of the IRPR, CIC may issue work permits to foreign nationals who are destined to work in British Columbia in specific occupations, for an employer or a defined group of employers without requiring a Labour Market Opinion whenever British Columbia has provided CIC with a written recommendation to issue work permits to members of a defined group authorizing them to work for an employer or defined group of employers and the foreign nationals are determined to be members of that group.

4.3.1 British Columbia will only make a written recommendation to CIC pursuant to sections 4.2 and 4.3 after it has consulted with and obtained advice from the TFW Working Group (as defined in section 8.1.3 of this Annex), or some other intergovernmental group as agreed to by the Parties to this Annex, in relation to the proposed recommendation.

4.3.2 British Columbia will provide an estimate of the number of anticipated openings for any defined group of foreign nationals recommended under section 4.3 as part of its written recommendation to CIC.

4.3.3 Recommendations made under sections 4.2 and 4.3 will be limited to a maximum twelve-month validity, subject to renewal based upon a new recommendation.

4.4 For work permits issued pursuant to sections 4.2 and 4.3 of this Annex, British Columbia will

act consistently with the objective set out in section 3.2 of this Annex. British Columbia also agrees to respect federal TFW Program principles and objectives, and to not undermine Canada's responsibilities to deliver the TFW program pursuant to the provisions of the IRPA and its Regulations. British Columbia will use sections 4.3 and 4.4 selectively, and does not intend to replace or replicate all Labour Market Opinions.

4.4.1 British Columbia will establish clear and transparent sets of criteria and procedures when proceeding pursuant to sections 4.3 and 4.4. British Columbia will develop these sets of criteria in cooperation with Canada, and will share with Canada its policies and procedures as adopted. Canada and British Columbia further agree to develop a system to provide Canada opportunities to comment on the development of policies and procedures related to British Columbia's recommendations;

4.4.2 British Columbia's recommendations may be made based on:

- a. local labour market demand;
- b. British Columbia's specific skills requirements;
- c. efforts by the British Columbia's employer community to fill job openings with Canadian citizens or permanent residents;
- d. implications for British Columbia's communities; and
- e. other considerations as may be determined by the Parties.

4.4.3 Work permit applications supported by a British Columbia recommendation will continue to be assessed against all other applicable IRPA and IRPR criteria, including the applicant's ability to perform the work sought and the likelihood that the applicant will voluntarily leave Canada at the end of the period authorized for their stay, noting that under subsection 22(2) of the IRPA a foreign national with the intention to become a permanent resident may still be eligible for temporary resident status in Canada. Applicants must also meet all admissibility criteria as outlined under the IRPA in order to obtain status as a temporary resident in Canada.

4.5 CIC will make all reasonable efforts to ensure that work permit applications made pursuant to a written recommendation as described in section 4.3 or section 4.4 of this Annex are processed in a timely manner.

## **5.0 Operational Improvements**

5.1 HRSDC is committed to working with provinces towards establishing national service standards for the processing of completed LMO applications within twelve (12) months of signing this Annex.

5.2 HRSDC agrees to implement ongoing improvements to the processing of Labour Market Opinions. Improvements will include:

- a. HRSDC posting Labour Market Opinion processing times on its website; and
- b. HRSDC providing applicants with notification of the receipt of Labour Market Opinion applications.

5.3 British Columbia will endeavour to make information available for TFWs and prospective TFWs on eligibility for British Columbia health insurance, workers compensation benefits, applicable employer or government-sponsored pension plans, and protection under the relevant provincial and federal occupational health and safety, employment, and labour relations standards.

5.4 CIC agrees to pursue opportunities to ensure that appropriate levels of ongoing funding are secured that would provide a more stable resource base to allow the TFW Program to remain sufficiently responsive to dynamic labour market needs.

5.5 Canada and British Columbia will conclude TFW information and data sharing agreements or arrangements at the earliest possible opportunity.

5.6 Canada and British Columbia agree to engage through the Canada-British Columbia Working Group on Temporary Foreign Workers, as referred to in section 8.1.3 of this Annex, to develop a system to provide British Columbia opportunities to participate in the development of elements of the TFW Program that are specific to that, including but not limited to:

- a. the determination of any occupations in British Columbia for which expedited or modified processes for obtaining a Labour Market Opinion might apply, and
- b. the calculation and determination of prevailing wages to be used in assessing Labour Market Opinion applications from British Columbia employers.

## 6.0 Compliance and Enforcement

6.1 British Columbia and Canada agree that in order to maintain TFW Program integrity and the ability of Canada and British Columbia to facilitate the entry of TFWs into British Columbia, the effective monitoring of TFWs, employment agencies and employers in order to ensure their compliance with TFW Program requirements, as well as with all applicable federal and provincial laws, is essential.

6.2 British Columbia and Canada agree, where authorities exist, to cooperate in the on-going administration and enforcement of the TFW Program in British Columbia by working with all relevant departments, ministries and agencies that respond to complaints or other information regarding working and living conditions and employment standards associated with TFWs and their employment. British Columbia and Canada further agree to maintain a coordinated enforcement strategy for programs that have an impact upon TFWs.

6.2.1 To facilitate these efforts, British Columbia and HRSDC will complete a Letter of Understanding to share information, and CIC will negotiate a Memorandum of Understanding to share information with British Columbia.

6.2.2 Canada and British Columbia will ensure that any exchange of personal information will be undertaken and conducted in accordance with the applicable legislation and policies governing the protection, exchange and disclosure of information, as described in section 10.4.2 of the General Provisions of this Agreement for CIC and British Columbia and the DHRSDC Act for HRSDC.

6.3 Subject to regulatory authority, Canada agrees to consider information provided by British Columbia with respect to employer misrepresentation or non-compliance with federal and/or provincial legislation in the issuance or denial of Labour Market Opinions and/or work permits. This includes any requirements respecting the licensing of employment agencies in British Columbia.

6.4 Canada and British Columbia will jointly ensure that TFW Program requirements are clearly communicated to all parties that have responsibilities and obligations under the program in a timely manner.

6.4.1 British Columbia will provide relevant information to CIC, which will, in turn, distribute it to TFWs prior to or upon their entry into Canada.

6.5 CIC will actively engage with the CBSA to make operational improvements to ensure enforcement of terms associated with work permits.

## 7.0 Innovative Initiatives

7.1 The Canada-British Columbia Working Group on Temporary Foreign Workers, as referred to in

section 8.1.3 of this Annex, will initiate, where feasible, and subject to regulatory authority, the following pilot projects within twelve (12) months of this Annex coming into force:

- a. to permit foreign workers to gain the Canadian work experience needed for licensing, and to develop provisions for a work permit for specific regulated occupations, as determined by the Working Group, such that residence or Canadian experience requirements associated with provincial licensing rules do not bar TFWs from working in those occupations.
- b. allow eligible spouses of TFWs engaged in work within the NOC C and D skill categories in British Columbia to receive open work permits.
- c. allow eligible dependents, aged 18-22, of all TFWs in British Columbia to receive open work permits.

7.2 Subject to regulatory authority, CIC, in consultation with the Working Group referred to in section 8.1.3, will also work to develop occupation-specific (but non-employer specific) work permits for TFWs working in those occupations in British Columbia. These work permits may be issued to TFWs in industries that meet British Columbia's economic development needs, in a manner that permits limited mobility of certain high-skilled TFWs within that particular industrial sector but does not negatively affect the normal functioning of the local or national labour market.

7.3 CIC and British Columbia will explore the feasibility of initiating a bilateral pilot project to test new methods to facilitate the recruitment of agricultural workers by British Columbia farmers to address shortages of agricultural workers. The pilot project will explore and promote a partnership agreement or arrangement between intergovernmental, government and non-governmental organizations in an effort to improve the recruitment and selection process by employers in the farm sector.

7.4 The Working Group referred to in section 8.1.3 will amend its terms of reference to be consistent with the responsibilities assigned to it under this Annex.

## **8.0 Implementation**

### **8.1 Governance**

8.1.1 In accordance with section 10.1.1 of the General Provisions of the Agreement, the Agreement Management Committee (AMC) will determine the appropriate mandate, structure and reporting requirements for the implementation of this Annex. In the absence of specific direction to the contrary, designated representatives (federal and provincial) will report to the AMC on an annual basis.

8.1.2 The designated representatives for the purpose of communication and notification pursuant to this Annex are:

- a. for CIC, the Director, Integration Branch;
- b. for HRSDC, the Director, Temporary Foreign Worker Directorate; and
- c. for British Columbia, the Director, Labour Market Initiatives, Ministry of Advanced Education and Labour Market Development.

8.1.3 Canada and British Columbia agree to maintain the TFW Working Group to oversee the implementation of this Annex and to meet the ongoing objectives set out in this Annex.

8.1.4 The TFW Working Group will report to the AMC, as established in section 10.1.4 on an annual basis.

### **8.2 Dispute Resolution Process**

In the case of a dispute or a disagreement under this Annex, Canada and British Columbia agree to follow the dispute resolution process outlined in section 10.3 of the General Provisions of the Agreement.

### **8.3 Information Sharing**

8.3.1 All arrangements made for information sharing shall be in accordance with section 10.4 of the General Provisions of the Agreement.

8.3.2 Canada and British Columbia agree to share information on prospective and actual TFWs destined to British Columbia to the extent permitted by law. Canada and British Columbia further agree to make available to each other all relevant labour market information in their possession, subject to legal restrictions.

8.3.3 CIC will attempt to obtain authorization from all work permit applicants destined for British Columbia to allow the sharing of work permit application information with British Columbia by redesigning the work permit application form. This information will be used by British Columbia as a basis for assessing the effectiveness of mechanisms, processes and engagement efforts.

### **8.4 Program Accountability and Evaluation**

8.4.1 Canada and British Columbia agree to encourage research related to the TFW program, and to annually share their respective research priorities and planned activities, and to cooperate on research initiatives and evaluations, as appropriate. Where appropriate, the Parties further agree to share with each other the results of any such research and evaluation activities.

8.4.2 Canada and British Columbia agree to co-operate to improve the capture and understanding of TFW program accountability measures such as processing times and occupational coding of work permit recipients destined to British Columbia, to support the ongoing review and evaluation of the TFW program.

8.4.3 Canada will evaluate the national TFW program on a five-year cycle so as to meet federal government accountability and evaluation requirements. The operation of the federal TFW Program within the province of British Columbia will be evaluated as a component of the national study of the national TFW Program. Canada will lead the evaluation of the national TFW program, including the development of the evaluation framework and other national evaluation activities. Canada and British Columbia agree to cooperate for the purpose of evaluation, and agree to share their respective evaluation reports.

8.4.4 CIC agrees to develop means and procedures to code the work permits of TFWs who are destined to work in British Columbia in such a way that data pertaining to that group can be extracted from the data for the overall national TFW Program, and shared with British Columbia, within the limits of Canada's management information technology. This includes noting work permits that are issued under a British Columbia recommendation as described in section 4.0 of this Annex, and work permits issued under the provisions of section 7.0 of this Annex.

8.4.5 Canada and British Columbia agree to undertake a joint review of the pilots as outlined in section 7.0. Process and review timelines will be established by the Working Group, referenced in section 8.1.3.

8.4.6 Canada and British Columbia will collaborate on the development and implementation of any future TFW Program accountability measures that relate specifically to the functioning of the TFW Program in British Columbia.

### **8.5 Term and Amendments**

8.5.1 In accordance with section 10.8.2 of the General Provisions of the Agreement and section 8.5.9 of this Annex, this Annex will be valid for five (5) years from the date of the Annex coming into effect.

8.5.2 The Parties agree to evaluate the effectiveness of the Annex no later than twelve (12) months prior to expiry.

8.5.3 Upon mutual consent of both parties in writing, the terms and conditions of this Annex can be extended at any time prior to its expiry, subject to any required approval or authorization including the approval of the Governor in Council.

8.5.4 All provisions of this Annex and any amendments to it will continue to operate and be effective, notwithstanding any termination of the General Provisions of the Agreement itself.

8.5.5 In keeping with the objectives set out in section 3.0 of this Annex, Canada will be open and transparent concerning its intention to enter into agreements with other provinces respecting TFWs. Canada will provide, at British Columbia's request,

- a. copies of other federal-provincial agreements made under paragraph 204 (c) of the IRPR;  
and
- b. access to terms and conditions of other federal-provincial TFW agreements.

8.5.6 Any term of this Annex may be amended by the written mutual consent of the signatories of this Annex or their designate, subject to any required approval or authorization including approval of the Governor-in-Council.

8.5.7 This Annex may be terminated by any of the signatories to the Annex at any time by providing twelve (12) months' notice in writing to the others.

8.5.8 British Columbia will advise Canada on any proposed agreement or arrangement British Columbia may choose to enter into with another party to carry out British Columbia's responsibility under this Annex.

8.5.9 This Annex will take effect on the date that it is signed by the last of the Parties to do so.

## **8.6 Notices**

In addition to those identified in section 8.1.2 of this Annex, any notice to be delivered under this Annex should be sent to the Party concerned as follows:

### **Address for notice to British Columbia:**

Deputy Minister  
Ministry of Advanced Education and Labour Market Development  
6<sup>th</sup> Floor – 1019 Wharf St.  
P.O. Box 9213 Stn. Prov. Govt.  
Victoria, British Columbia V8W 9J1

### **Address for notice to Citizenship and Immigration Canada:**

Deputy Minister  
Citizenship and Immigration Canada  
365 Laurier Avenue West  
Ottawa, Ontario K1Z 1L1

### **Address for Notice to Human Resources and Skills Development Canada:**

Deputy Minister



Human Resources and Skills Development Canada  
140 Promenade du Portage  
13th Floor  
Gatineau, Quebec K1A 0J9

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2010

\_\_\_\_\_  
Minister of Citizenship, Immigration and Multiculturalism

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Minister of Human Resources and Skills Development

\_\_\_\_\_  
Minister of Advanced Education and Labour Market Development

Date Modified: 2010-04-15